

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SAGENT TECHNOLOGY, INC.

*

Plaintiff

*

v.

*

Civil Action No. JFM-02-2505

MICROS SYSTEMS, INC., et al

*

Defendants

*

* * * * *

**SAGENT TECHNOLOGY, INC.'S MOTION TO DISMISS
COUNTERCLAIM OR, ALTERNATIVELY
FOR SUMMARY JUDGMENT**

Sagent Technology, Inc. ("Sagent"), by and through undersigned counsel, pursuant to Fed. R. Civ. Proc. 12(b)(1), (3) and (6) and Fed. R. Civ. Proc. 56, hereby moves to dismiss the Counterclaim prosecuted by Micros Systems, Inc. ("Micros") or, alternatively, for summary judgment on the Counterclaim. In support of its motion, Sagent states as follows:

1. Counts II (Negligent Misrepresentation), III (Breach of Covenant of Good Faith and Fair Dealing) and IV (Fraud in the Inducement) of the Counterclaim relate to and arise from a contract between the parties which contains a choice of law/choice of forum provision that dictates that any actions related to the contract be brought in Santa Clara County California and decided under California law. Therefore, Counts II, III and IV of the Counterclaim are not appropriately venued in this Court and should be dismissed. Additionally, dismissal of Counts II, III and IV of the Counterclaim would streamline disposition of this case as Sagent's breach of contract claims against Micros will be decided under Maryland law.

2. Summary judgment should be entered in favor of Sagent as to Count I of the Counterclaim (Fraud) because the statements cited in support of that claim cannot serve as a

predicate for a fraud claim under Maryland law and there is no evidence that Sagent acted with the requisite intent to deceive Micros.

3. Count II of the Counterclaim (Negligent Misrepresentation) should be dismissed because Sagent owed no duty to Micros.

4. Count III of the Counterclaim should be dismissed because Maryland law does not recognize a separate cause of action for breach of a covenant of good faith and fair dealing.

WHEREFORE, for the foregoing reasons, and those set forth in the accompanying Memorandum of Law filed in support of this motion, Sagent Technology, Inc. respectfully requests that Counts II, III and IV of the Counterclaim be dismissed and that summary judgement be entered in favor of Sagent with respect to Count I of the Counterclaim. A proposed Order is attached hereto.

Respectfully submitted,

/s/Scott H. Phillips
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Counsel for Sagent Technology, Inc.

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2003, a copy of Sagent Technology, Inc.'s Motion to Dismiss Counterclaim Or, In the Alternative, for Summary Judgment was filed and served electronically on all counsel of record.

/s/Scott H. Phillips
Scott H. Phillips

(B0328324.WPD;1)